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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

Federal Communications Commission
Office of Secretary

In the matter of)
Wireless Consumers Alliance, Inc.)
Petition for a Declaratory Ruling)
on Communications Act Provisions and FCC)
Jurisdiction Regarding Preemption of State Courts)
from Awarding Monetary Damages Against)
Commercial Radio Service Providers for)
Violation of Consumer Protection or other)
State Laws,)

DOCKET FILE COPY ORIGINAL

WT 99-263

To: The Commission

AMICUS BRIEF

Commentor is Plaintiffs' counsel in a class action styled JAMES J. WHITE, PERRY KRANIAS, RALPH DELUISE and WALL STREET CONNECTIONS, INC. vs. GTE CORPORATION; GTE WIRELESS INCORPORATED f/k/a GTE MOBILNET INCORPORATED; GTE WIRELESS OF THE SOUTH INCORPORATED f/k/a GTE MOBILNET OF THE SOUTH INCORPORATED; GTE MOBILNET OF TAMPA INCORPORATED; GTE WIRELESS OF HOUSTON INCORPORATED; GTE MOBILNET OF CLEVELAND INCORPORATED; and GTE MOBILNET OF THE SOUTHWEST INCORPORATED, (collectively "GTE"), brought in the United States District Court for the Middle District of Florida, Case No.97-1859-CIV-T-26C, ("GTE Class Action"). The United States District Court for the Middle District of Florida has held that state law claims for violation of Florida's Deceptive and Unfair Trade Practices are not preempted as improper rate regulation in violation of the FCA.

In the GTE Class Action, the Plaintiffs have not asserted that the *rates themselves* are unjust and unreasonable, rather they have asserted that GTE failed to disclose or otherwise concealed the

true *nature* of their billing practice to consumers, and as such constitute an unfair and deceptive practice under §201(b) of the Communications Act. The pertinent factual allegations found in the GTE Class Action Third Amended Complaint (a complete copy is attached hereto as **Exhibit "A"**) are as follows:

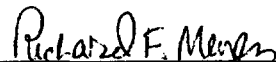
17. At no time did GTE adequately inform or disclose to Plaintiffs that they would be charged for all airtime on a Rounded Up basis nor did GTE adequately disclose the nature of its Rounding Up practices.
18. Plaintiffs and class members were reasonably induced into contracts, both oral and written, for cellular services by GTE with advertisements and materials, including, among other things, promises of free airtime. Such advertisements and materials do not disclose GTE's practices of Rounding Up.
19. The regular monthly bills provided to Plaintiffs and GTE's cellular phone customers do not disclose or explain to the consumer GTE's practice of Rounding Up. Please see the Sample Billings attached as Composite Exhibit "A".
20. Plaintiffs and similarly situated GTE cellular phone service customers entered into certain contracts for said cellular service. Nowhere in said contracts is there an adequate a description or disclosure, if any, provided as to GTE's Rounding Up practices. A copy of a Representative Plaintiff's contract is attached hereto as Exhibit "B" and made a part hereof.
21. The parties to the contracts are (i) GTE (GTE MOBILNET SERVICES CORP. and any and all other subsidiaries and affiliates of GTE MOBILNET SERVICES CORPORATION) and (ii) Plaintiffs and class members.
22. The contracts, both oral and written, were used by Defendants with both business customers and with personal use customers.
23. Over time, based upon the deceptive nature of GTE's Rounding Up practices, Plaintiffs and GTE cellular customers similarly situated have paid for Rounded Up airtime well in excess of actual airtime used.

As can be seen clearly above, the GTE Class Action does not allege that GTE's rates are unjust or unreasonable, rather the basis of the complaint is the deceptive manner in which "next minute" charges for airtime are concealed from consumers.

It should be further noted that the GTE Class Action is a federal suit, primarily brought pursuant to 28 U.S.C. 1331 (Federal Question), 47 U.S.C. 201(B) (The Communications Act), 18 U.S.C. 1341 (Mail Fraud), and 18 U.S.C. 1961 et. seq. (RICO). The GTE Class Action arises under the laws of the United States, and the United States District Court has jurisdiction over Florida state claims under the principles of pendent jurisdiction. The state claims asserted all relate to GTE's unfair and deceptive trade practices, and have nothing to do with the actual rates set by GTE. Plaintiffs have not requested a judicial determination of the justness or fairness of the chosen rates, rather they seek that the deceptive practices of those CMRS providers be enjoined and that consumers be justly compensated. In other words, consumers are asking to be fully informed of the "next minute" billing practice, and have not complained that the rates themselves are too high or unfair.

GTE filed a Motion to Dismiss the state law claims (breach of contract and violation of Florida's Deceptive and Unfair Trade Practices Act) in the Third Amended Complaint, claiming that such claims are preempted expressly and completely as improper rate regulation in violation of the FCA. The Court specifically held that these claims are not preempted by the FCA. (A complete copy of the Court's Order is attached hereto as **Exhibit "B"**).

Respectfully submitted,



Richard F. Meyers, Esquire
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Clearwater, FL 33755

Ph: (727) 441-2635

Attorney for GTE Class Action Plaintiffs

FBN#0893315

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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES J. WHITE, PERRY KRANIAS,
RALPH DELUISE and WALL STREET
CONNECTIONS, INC.

Case No. 97-1859-CIV-T-26C

Representative Plaintiffs,

vs.

**CLASS ACTION COMPLAINT;
DEMAND FOR JURY TRIAL**

GTE CORPORATION; GTE WIRELESS
INCORPORATED f/k/a GTE MOBILNET
INCORPORATED; GTE WIRELESS OF
THE SOUTH INCORPORATED f/k/a
GTE MOBILNET OF THE SOUTH
INCORPORATED; GTE MOBILNET OF
TAMPA INCORPORATED; GTE WIRELESS
OF HOUSTON INCORPORATED; GTE
MOBILNET OF CLEVELAND INCORPORATED;
and GTE MOBILNET OF THE SOUTHWEST
INCORPORATED,

Defendants.

THIRD AMENDED COMPLAINT

The named Representative Plaintiffs, JAMES J. WHITE, PERRY KRANIAS, RALPH DELUISE and WALL STREET CONNECTIONS, INC. (hereinafter referred to as "Plaintiffs"), on their own behalf and behalf of all others similarly situated, sue the Defendants, GTE CORPORATION; GTE WIRELESS INCORPORATED f/k/a GTE MOBILNET INCORPORATED; GTE WIRELESS OF THE SOUTH INCORPORATED f/k/a GTE MOBILNET OF THE SOUTH INCORPORATED; GTE MOBILNET OF TAMPA INCORPORATED; GTE WIRELESS OF

HOUSTON INCORPORATED; GTE MOBILNET OF CLEVELAND INCORPORATED; and GTE MOBILNET OF THE SOUTHWEST INCORPORATED, (hereinafter collectively referred to as "GTE"), and allege:

PARTIES

1. This action is brought by Plaintiffs as a class action, on their own behalf and on behalf of all others similarly situated, under the provisions of Rule 23, Federal Rules of Civil Procedure.

2. Representative Plaintiffs, **JAMES J. WHITE, PERRY KRANIAS, and RALPH DELUISE** are citizens of the United States, and are residents of the State of Florida. Members of the class are residents throughout much of the United States.

3. Representative Party Plaintiff, **WALL STREET CONNECTIONS, INC.**, is a dissolved Florida Corporation having Ralph DeLuise as its surviving President and having conducted its business from a primary office located in Pinellas County, Florida.

4. At all times material hereto, **GTE CORPORATION** is a New York corporation engaged in, among other things, providing, among other services, cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates. GTE CORPORATION is the parent corporation of or is otherwise affiliated with all other Defendants named herein.

5. At all times material hereto, **GTE WIRELESS INCORPORATED f/k/a GTE MOBILNET INCORPORATED**, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

6. At all times material hereto, **GTE WIRELESS OF THE SOUTH**

INCORPORATED f/k/a GTE MOBILNET OF THE SOUTH INCORPORATED, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates, and is duly authorized to conduct business in the State of Florida.

7. At all times material hereto, **GTE MOBILNET OF TAMPA INCORPORATED**, is a Florida corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates, and is duly authorized to conduct business in the State of Florida.

8. At all times material hereto, **GTE WIRELESS OF HOUSTON, INC.**, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

9. At all times material hereto, **GTE MOBILNET OF CLEVELAND, INC.**, is a Delaware corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

10. At all times material hereto, **GTE MOBILNET OF THE SOUTHWEST, INC.**, is a Texas corporation engaged in providing cellular telephone communication services throughout the United States either directly or indirectly through its subsidiaries and affiliates.

11. All Defendants named herein are subsidiaries or affiliates of GTE MOBILNET SERVICES CORPORATION.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction pursuant to 28 U.S.C. 1331 (Federal Question) and 47 U.S.C. 201(B) (The Communications Act). This civil action arises under the laws

of the United States, and this court has jurisdiction over Florida state claims under the principles of pendent jurisdiction.

13. At all times material hereto, Defendant(s) have transacted and done business within the Middle District of Florida either directly or indirectly through their subsidiaries and affiliates. The causes of action alleged herein arose in substantial part within the Middle District of Florida. Venue is therefor proper under 28 U.S.C. 1391(b) and (c).

GENERAL ALLEGATIONS

14. At all times material hereto, GTE has charged its cellular phone customers in whole minute increments, without fractions, and at all times such charges (i) are measured from the time the "send"(or other similarly named button) is pushed (ii) include time for "unconnected calls" (where no one responds after a certain period of time or after a certain number of attempts within a short period of time) and (iii) are "rounded up" to the next minute (collectively "Round Up" or "Rounded Up" or "Rounding Up"). For example, when a call that lasts 1 minute and 1 second (including all dead time and ringing time which follows pushing the "send" button), the airtime is rounded up to the next full minute and Plaintiffs and all GTE cellular customers similarly situated are charged and billed for a 2 minute call.

15. At all times material hereto, Plaintiffs and class members were customers of GTE, obtained cellular telephonic services through GTE, were billed monthly on a Rounded Up basis for said services and paid for said Rounded Up services, a copy of certain representative billings being attached as Composite Exhibit "A" to this complaint, and by this reference incorporated herein as "Sample Billings".

16. At all times material hereto, GTE records the duration of all calls ("airtime") made and received by its cellular phone customers and, on information and belief, GTE's equipment and computers are fully capable of and, in fact, do record airtime either to the second or a fraction thereof.

17. At no time did GTE adequately inform or disclose to Plaintiffs that they would be charged for all airtime on a Rounded Up basis nor did GTE adequately disclose the nature of its Rounding Up practices.

18. Plaintiffs and class members were reasonably induced into contracts, both oral and written, for cellular services by GTE with advertisements and materials, including, among other things, promises of free airtime. Such advertisements and materials do not disclose GTE's practices of Rounding Up.

19. The regular monthly bills provided to Plaintiffs and GTE's cellular phone customers do not disclose or explain to the consumer GTE's practice of Rounding Up. Please see the Sample Billings attached as Composite Exhibit "A".

20. Plaintiffs and similarly situated GTE cellular phone service customers entered into certain contracts for said cellular service. Nowhere in said contracts is there an adequate a description or disclosure, if any, provided as to GTE's Rounding Up practices. A copy of a Representative Plaintiff's contract is attached hereto as Exhibit "B" and made a part hereof.

21. The parties to the contracts are (i) GTE (GTE MOBILNET SERVICES CORP. and any and all other subsidiaries and affiliates of GTE MOBILNET SERVICES CORPORATION) and (ii) Plaintiffs and class members.

22. The contracts, both oral and written, were used by Defendants with both business customers and with personal use customers.

23. Over time, based upon the deceptive nature of GTE's Rounding Up practices, Plaintiffs and GTE cellular customers similarly situated have paid for Rounded Up airtime well in excess of actual airtime used.

CLASS REPRESENTATION ALLEGATIONS

24. This action is brought by Plaintiffs as a class action on their own behalf and on behalf of all others similarly situated under the provisions of F.R.C.P. 23.

25. Members of the class are all persons and entities located throughout the State of Florida, who are or have been cellular service customers of Defendant GTE, who have been charged and paid for Rounded Up airtime.

26. Because of GTE's concealment of and failure to disclose or failure to adequately disclose its practices of charging on a Rounded Up basis, members of the class have paid over time sums which greatly exceed actual airtime used.

27. The exact number of members of the class as identified and described above is not known, but it is estimated, by virtue of information circulated by GTE to the general public, that GTE provides cellular telephone services to more than Three Million (3,000,000) customers nationwide and that a large portion of those customers are situated in Florida. The members of the class are so numerous that joinder of the individual class members herein is impracticable.

28. There are common questions of law and fact in the actions that relate to and affect the rights of each member of the class that predominate over any individual issues, and the relief sought is common to the members within the entire class.

29. The claims advanced by the Plaintiffs are typical of the claims of each member of the proposed class in that the Plaintiffs are now or have in the past been GTE cellular telephone service customers.

30. The Plaintiffs will fairly and adequately protect and represent the interest of each member of the proposed class, seek recovery on their own behalf and on behalf of all the similarly situated members of the class, and the Plaintiffs agree to act as class representatives. Additionally, Plaintiffs are committed to protect vigorously the rights of the class and will do so fairly and adequately.

31. Prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications with respect to individual members of the class which would establish incompatible standards of conduct for GTE, or adjudications with respect to individual members of the class which would as a practical matter be dispositive of the interests of the other members not parties to the adjudications or substantially impair or impede their ability to protect their interests.

32. GTE has acted or refused to act on grounds generally applicable to the class, thereby making appropriate final injunctive relief or corresponding declaratory relief with respect to the class as a whole, or the questions of law or fact common to the members of the class predominate over any questions affecting only individual members, and that a class action is superior to other available methods for the fair and efficient adjudication of the controversy.

33. If the present action is not certified as a class action, there is a risk that GTE will continue unfairly, unlawfully and improperly to charge for all airtime on a Rounded Up basis. Further, adjudication concerning any individual of the class as defined herein would, as a practical

matter, be determinative of the interest of the class members who are not parties to the adjudication, or would substantially impair or impede the ability of other members of the class who are not parties to this suit to protect their interests.

34. It is desirable to concentrate the litigation of all claims of the Plaintiffs and the members of the class in this forum.

35. Potential class management difficulties are insignificant when weighed against the impossibility of affording adequate relief to the Plaintiffs and members of the class through separate actions.

WHEREFORE, the Plaintiffs move this Honorable Court to certify the above identified class and determine said Plaintiffs to be adequate representatives of the class in this cause.

COUNT I
VIOLATION OF 47 U.S.C. 201(b)

36. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

37. This is an action for damages for violation of 47 U.S.C. 201(b), and brought pursuant to 47 U.S.C. 207.

38. The practice of charging for for all airtime on a Rounded Up basis is unjust and unreasonable, and therefore unlawful, under the provisions of 47 U.S.C. 201(b).

39. Pursuant to 47 U.S.C. 206, GTE is liable to Plaintiffs and class members for the full amount of damages sustained by the violation of 47 U.S.C. 201(b), together with reasonable attorney's fees, to be fixed by the court, which shall be taxed and collected as part of the costs in this case.

WHEREFORE, Plaintiffs and class members request that the conduct of GTE as set forth in

Count I above be adjudged unlawful under 47 U.S.C. 201(b), for attorney's fees and costs of this action and for such other and further relief as the Court may deem just and appropriate under the circumstances.

COUNT II
INJUNCTION

40. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

41. This is an action for injunctive relief.

42. GTE has collected and continues to collect money pursuant to their deceptive Rounding Up practices and such practices are against public policy and otherwise unfair and inequitable, especially in view of the potential for excessive billing on an ongoing monthly basis.

43. Each month, Plaintiffs and class members continue to be charged on a Rounded Up basis and, hence, Plaintiffs and class members have paid or are paying for airtime not used. The Plaintiffs and class members are in immediate and imminent danger of irreparable injury by being so billed with the next monthly billing cycle and beyond.

44. The Plaintiffs and class members have no adequate remedy at law.

WHEREFORE, Plaintiffs and class members request that the conduct of GTE as set forth in Count II above be adjudged as placing Plaintiffs and class members in immediate and imminent danger of irreparable injury, that the Court enter an order permanently enjoining and restraining GTE from Rounding Up, for costs of this action and for such other and further relief as the Court may deem just and appropriate.

COUNT III
BREACH OF CONTRACT

45. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

46. This is an action for breach of contract.

47. The agreement to provide cellular telephone services including airtime is a contract, or at the very least, a quasi-contract, indeed, Defendants often utilize written agreements such as those attached as Exhibits hereto with Plaintiffs and class members in connection with initiating cellular phone service.

48. Defendants do not disclose or, alternatively, do not adequately disclose their Rounding Up practices in their oral and written contracts with Plaintiffs and class members and because of this practice, Defendants have breached each and every contract with Plaintiffs and class members by charging and collecting more money for cellular phone services than Plaintiffs and class members have agreed to pay.

49. Plaintiffs and class members have performed under their contracts and quasi contracts with Defendants by paying for cellular phone service.

50. As a direct and proximate result of Defendants' breach of said contracts, Plaintiffs and class members have been damaged.

WHEREFORE, Plaintiffs and class members pray that the conduct of GTE as set forth in Count III be adjudged as constituting a breach of the cellular service contracts and quasi contracts and demand a judgment in damages against Defendants, including prejudgment interest, for costs of this action and for such other and further relief as the Court may deem just under the circumstances.

COUNT IV
VIOLATION OF FLORIDA'S UNFAIR AND
DECEPTIVE TRADE PRACTICES ACT

51. The Plaintiffs and class members reallege and incorporate herein paragraphs 1 through 23 above, as if recited in full.

52. This is an action for damages which exceed \$50,000.00 pursuant to Fla. Stat. §501.201, et. seq., Florida Unfair Deceptive Trade Practices Act.

53. Plaintiffs and class members are "consumers" as defined in Fla. Stat. §501.203(7).

54. The providing of cellular telephone services by GTE constitutes a "trade or commerce" under Fla. Stat. §501.203(8).

55. The actions of GTE in charging for all airtime on a Rounded Up basis, without adequately disclosing such practices, constitutes an unfair method of competition, unconscionable acts or practices, and/or unfair or deceptive acts or practices in the conduct of any trade or commerce in violation of Fla. Stat. §501.201, et. seq., Florida Unfair Deceptive Trade Practices Act.

56. GTE knew or should have known that its conduct was unfair and deceptive or otherwise prohibited by §501.201, et. seq., Florida Unfair Deceptive Trade Practices Act.


57. As a direct and proximate result of the unfair and deceptive trade practices of GTE, Plaintiffs and class members have been damaged in an amount equal to actual damages, attorneys' fees and costs, plus prejudgment interest.

WHEREFORE, Plaintiffs and class members pray that the conduct of GTE in Count V be adjudged as violative of Florida's Unfair and Deceptive Trade Practices Act, that Plaintiffs and

class members were harmed as a direct and proximate result of such violation, and that the Court enter judgment for the Plaintiffs and class members enjoining GTE from charging on a Rounded Up basis and for damages in an amount equal to actual damages incurred, together with attorneys' fees and costs, plus prejudgment interest.

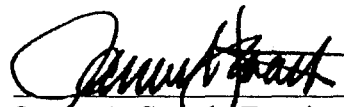
DEMAND FOR JURY TRIAL

Plaintiffs herewith demand a trial by jury as to all matters so triable.


James A. Staack, Esquire
Trial Counsel for Representative Plaintiffs
STAACK AND SIMMS, P.A.
121 North Osceola Ave., 2nd Floor
Clearwater, FL 33755
(727) 441-2635
Fla. Bar No. 296937

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy has been served to: James M. Landis, Esquire, FOLEY & LARDNER, 100 North Tampa Street, Suite 2700, Tampa, FL 33601; and Peter Kontio, Esquire, ALSTON & BIRD LLP, One Atlantic Center, 1201 West Peachtree Street, Atlanta, GA 30309-3424, by U.S. Mail, this 29th day of October, 1998.


James A. Staack, Esquire

Jim White

GTE Mobilnet

Cellular Account # (813) 580-5550

Page # 01

MONTHLY RECURRING CHARGES FOR CELLULAR PHONE NUMBER (813) 580-5550

Monthly Access Charges from 12/16 through 01/15		\$49.95
Feature Charges for 12/16 through 01/15		
DETAIL BILLING CHARGE	\$3.95	
Total Charges for Features		\$3.95
<i>pd 1-14-94</i>		
Taxes on Recurring Charges:		
Federal	\$1.50	
State	3.87	
County	0.54	
City	0.00	
Misc	4.94	
Total of Taxes		\$10.85
Total Monthly Recurring Charges		\$64.75

#1,158.39

BILLING CREDIT AND ADJUSTMENTS AND OTHER CHARGES FOR (813) 580-5550

Date	Description of Adjustment	Amount
12/15	LATE PAYMENT FEE	\$4.86
Taxes on Adjustments and Credits:		
Federal	\$0.00	
State	0.00	
County	0.00	
City	0.00	
Misc	0.00	
Total of Taxes		\$0.00
Total Billing Adjustments and Other Charges		\$4.86

MESSAGES FROM GTE MOBILNET FOR CELLULAR PHONE NUMBER (813) 580-5550

EFFECTIVE NOVEMBER 19, 1993, THE POST OFFICE BOX ADDRESS FOR YOUR CUSTOMER PAYMENTS WILL CHANGE TO:

GTE MOBILNET/FLORIDA REGION
P. O. BOX 630025
DALLAS, TEXAS 75263-0025

PAYMENTS WILL STILL BE PROCESSED BY THE GTE LOCKBOX AT THE SAME LOCATION -- ONLY THE ACTUAL BOX NUMBER IS CHANGING.

A FRIENDLY REMINDER

DON'T FORGET THE GTE MOBILNET SALES NUMBER, 1-800-733-GTE1! FOR YOUR CONVENIENCE, PLEASE NOTE THAT THIS IS NOT A LOCAL NUMBER BUT A TOLL-FREE CALL!!! SO, CALL TODAY FOR YOUR NEXT CELLULAR PURCHASE AND GET GOING, GET TALKING, GET MOBILIZED!!!

*FHP--A NEW FREE SAFETY STAR LINE

LIFE ON THE ROAD JUST BECAME A LITTLE SAFER WITH GTE MOBILNET'S NEW STAR LINE, *FHP. THIS IS A FREE CALL FROM YOUR CELLULAR PHONE AND IT

EXHIBIT A

Cellular Account # (813) 580-5550

Page # 03

AIRTIME AND LONG DISTANCE DETAIL SUMMARY (CONT'D.)										
49	11/19	18:56	CLEARWATER,FL	(813)530-4287	P	1:00	A	0.42	0.00	0.42
50	11/19	19:02	CLEARWATER,FL	(813)536-1014	P	1:00	A	0.42	0.00	0.42
51	11/19	19:02	CLEARWATER,FL	(813)420-6397	P	7:00	A	2.94	0.00	2.94
52	11/19	19:11	CLEARWATER,FL	(813)595-5014	P	1:00	A	0.42	0.00	0.42
53	11/20	14:45	CLEARWATER,FL	(813)461-9447	O	1:00	A	0.20	0.00	0.20
54	11/21	20:01	CLEARWATER,FL	(813)539-1572	O	1:00	A	0.20	0.00	0.20
55	11/21	20:06	CLEARWATER,FL	(813)539-1572	O	2:00	A	0.40	0.00	0.40
56	11/22	08:51	VIRGINIBCH,VA	(804)425-1366	P	1:00	LD	0.42	0.23	0.65
57	11/22	08:54	CLEARWATER,FL	(813)536-9489	P	3:00	A	1.26	0.00	1.26
58	11/22	19:18	CLEARWATER,FL	(813)580-5550	P	2:00	A	0.84	0.00	0.84
59	11/24	19:17	CLEARWATER,FL	(813)530-4287	P	2:00	A	0.84	0.00	0.84
60	11/24	19:19	OVIEDO, FL	(407)365-8019	P	1:00	LD	0.42	0.20	0.62
61	11/24	19:21	SARASOTA, FL	(813)365-1327	P	7:00	A	2.94	0.00	2.94
62	11/25	13:10	CLEARWATER,FL	(813)536-1014	P	1:00	A	0.42	0.00	0.42
63	11/26	13:54	CLEARWATER,FL	(813)530-4287	P	3:00	A	1.26	0.00	1.26
64	11/27	21:09	OVIEDO, FL	(407)365-8019	O	3:00	LD	0.60	0.36	0.96
65	11/28	12:23	CLEARWATER,FL	(813)530-9217	O	2:00	A	0.40	0.00	0.40
66	11/29	17:01	CLEVELAND, OH	(216)586-3224	P	3:00	LD	1.26	0.47	1.73
67	11/29	17:05	CLEARWATER,FL	(813)530-4287	P	1:00	A	0.42	0.00	0.42
68	11/29	17:06	CLEARWATER,FL	(813)791-7285	P	2:00	A	0.84	0.00	0.84
69	11/29	17:15	CLEARWATER,FL	(813)580-5550	P	1:00	A	0.42	0.00	0.42
70	11/29	17:17	CLEARWATER,FL	(813)791-7285	P	9:00	A	3.78	0.00	3.78
71	11/29	17:34	CLEARWATER,FL	(813)580-5550	P	21:00	A	8.82	0.00	8.82
72	11/29	17:59	NORFOLK, VA	(804)621-2235	P	4:00	LD	1.68	0.60	2.28
73	11/29	18:05	PHILA, PA	(215)677-8842	P	2:00	LD	0.84	0.31	1.15
74	11/29	18:07	CLEARWATER,FL	(813)586-2909	P	2:00	A	0.84	0.00	0.84
75	11/29	18:09	CLEARWATER,FL	(813)580-5550	P	4:00	A	1.68	0.00	1.68
76	11/29	18:13	BRADENTON, FL	(813)739-2775	P	3:00	A	1.26	0.00	1.26
77	11/29	18:30	CLEARWATER,FL	(813)530-4287	P	2:00	A	0.84	0.00	0.84
78	11/29	20:38	CLEARWATER,FL	(813)446-1455	*	0:00	A	0.00	0.00	0.00*
79	11/29	20:39	CLEARWATER,FL	(813)446-1455	P	7:00	A	2.94	0.00	2.94
80	11/29	21:39	CLEARWATER,FL	(813)580-5550	O	1:00	A	0.20	0.00	0.20
81	11/30	10:09	CLEARWATER,FL	(813)530-9700	P	14:00	A	5.88	0.00	5.88
82	11/30	10:23	DELAND, FL	(904)734-7516	P	2:00	LD	0.84	0.49	1.33
83	11/30	10:25	FTLAUDERDL,FL	(305)491-3210	P	3:00	LD	1.26	0.73	1.99
84	11/30	10:28	TULSA, OK	(918)743-2100	P	1:00	LD	0.42	0.24	0.66
85	11/30	10:29	CLEARWATER,FL	(813)791-3797	P	2:00	A	0.84	0.00	0.84
86	11/30	10:30	CLEARWATER,FL	(813)796-5848	P	2:00	A	0.84	0.00	0.84
87	11/30	14:41	CLEARWATER,FL	(813)441-3500	P	2:00	A	0.84	0.00	0.84
88	11/30	15:13	CLEARWATER,FL	(813)530-4287	P	1:00	A	0.42	0.00	0.42
89	11/30	15:21	CLEARWATER,FL	(813)580-5550	P	1:00	A	0.42	0.00	0.42
90	11/30	15:50	TAMPA, FL	(813)289-0099	P	2:00	A	0.84	0.00	0.84
91	11/30	16:00	CLEARWATER,FL	(813)580-5550	P	1:00	A	0.42	0.00	0.42
92	11/30	16:25	CLEARWATER,FL	(813)580-5550	P	1:00	A	0.42	0.00	0.42
93	11/30	16:39	CLEARWATER,FL	(813)580-5550	P	1:00	A	0.42	0.00	0.42
94	11/30	16:51	CLEARWATER,FL	(813)580-5550	P	1:00	A	0.42	0.00	0.42
95	12/01	10:38	CLEARWATER,FL	(813)580-5550	P	1:00	FMR	0.00	0.21	0.21
96	12/01	10:39	CLEARWATER,FL	(813)580-5550	P	6:00	FMR	0.00	0.81	0.81
97	12/01	10:55	CLEARWATER,FL	(813)580-5550	P	1:00	FMR	0.00	0.21	0.21
98	12/01	14:35	CLEARWATER,FL	(813)580-5550	P	6:00	FMR	0.00	0.81	0.81
99	12/02	16:31	CLEARWATER,FL	(813)580-5550	P	2:00	FMR	0.00	0.33	0.33
100	12/02	16:39	CLEARWATER,FL	(813)580-5550	P	1:00	FMR	0.00	0.21	0.21
101	12/02	16:41	CLEARWATER,FL	(813)580-5550	P	3:00	FMR	0.00	0.45	0.45
102	12/03	09:17	BRADENTON, FL	(813)739-2775	P	3:00	A	1.26	0.00	1.26
103	12/03	09:20	CLEARWATER,FL	(813)530-4287	P	1:00	A	0.42	0.00	0.42
104	12/03	12:35	CLEARWATER,FL	(813)580-5550	P	6:00	A	2.52	0.00	2.52
105	12/03	17:56	CLEARWATER,FL	(813)530-4287	P	1:00	A	0.42	0.00	0.42
106	12/03	18:00	CLEARWATER,FL	(813)536-1014	P	3:00	A	1.26	0.00	1.26
107	12/05	15:03	CLEARWATER,FL	(813)530-4287	O	1:00	A	0.20	0.00	0.20

* 1 minute deducted for dropped call

Total Airtime Minutes

Peak (P):	253.00	Subtotal Airtime Charges:	\$89.32
Off-Peak (O):	27.00	Subtotal Long Distance Charges:	15.23
Night(N)/Other	0.00	Subtotal Airtime & Long Distance:	104.55

See Reverse for Legend

Taxes on Airtime and Long Distance:

Federal	\$3.20
State	7.47

EXHIBIT A

Cellular Account # (813) 580-5550

Page # 04

AIRTIME AND LONG DISTANCE DETAIL SUMMARY (CONT'D.)

County	0.36	
City	0.00	
Misc	2.62	
Total of Taxes		\$13.65

Total Airtime and Long Distance Charges:
\$118.20
ROAMER CHARGES FOR CELLULAR PHONE NUMBER (813) 580-5550

Charges incurred for service provided while in a cellular service area other than your home service area of TAMPA.

Service provided while in PHILADELPH, PA SID #: 00008

LINE	DATE	TIME	CITY CALLED	PHONE NUMBER CALLED	MIN.	CALL TYPE	AIR CHRGS	LD CHRGS	CALL TOTAL
1	11/02	22:13	LOCAL,	CL (215)677-8842	2:00	A	2.00	0.00	2.00
2	11/02	22:13	LOCAL,	CL (215)677-8842	2:00	LD	0.00	0.12	0.12
3	11/02		DAILY USE	CH		D			3.00
4	11/03	13:56	ORLANDO,	FL (407)275-1869	4:00	A	4.00	0.00	4.00
5	11/03	13:56	ORLANDO,	FL (407)275-1869	4:00	LD	0.00	0.96	0.96
6	11/03	14:01	800 SERV,	CL (800)275-3628	2:00	A	2.00	0.00	2.00
7	11/03		DAILY USE	CH		D			3.00
8	11/04	08:02	CLEARWATER,FL	(813)530-4287	2:00	A	2.00	0.00	2.00
9	11/04	08:02	CLEARWATER,FL	(813)530-4287	2:00	LD	0.00	0.25	0.25
10	11/04	08:03	CLEARWATER,FL	(813)530-4287	4:00	A	4.00	0.00	4.00
11	11/04	08:03	CLEARWATER,FL	(813)530-4287	4:00	LD	0.00	1.00	1.00
12	11/04	10:49	800 SERV,	CL (800)275-3628	3:00	A	3.00	0.00	3.00
13	11/04	12:18	HOUSTON,	TX (713)656-7736	2:00	A	2.00	0.00	2.00
14	11/04	12:18	HOUSTON,	TX (713)656-7736	2:00	LD	0.00	0.25	0.25
15	11/04	12:20	HOUSTON,	TX (713)656-7735	1:00	A	1.00	0.00	1.00
16	11/04	12:20	HOUSTON,	TX (713)656-7735	1:00	LD	0.00	0.25	0.25
17	11/04	12:21	HOUSTON,	TX (713)656-7798	2:00	A	2.00	0.00	2.00
18	11/04	12:21	HOUSTON,	TX (713)656-7798	2:00	LD	0.00	0.25	0.25
19	11/04	14:07	CLEARWATER,FL	(813)530-4287	2:00	A	2.00	0.00	2.00
20	11/04	14:07	CLEARWATER,FL	(813)530-4287	2:00	LD	0.00	0.25	0.25
21	11/04		DAILY USE	CH		D			3.00

Subtotal of Roamer Charges incurred while in PHILADELPH, PA

\$36.33

See Reverse for Legend

Taxes on Roamer charges incurred while in PHILADELPH, PA.

Federal	\$1.10	
State	1.98	
County	0.00	
City	0.14	
Misc	0.00	
Total of Taxes		\$3.22

Total of Roamer Charges Incurred while In PHILADELPH, PA
\$39.55

Service provided while in ATLANTA, GA SID #: 00034

LINE	DATE	TIME	CITY CALLED	PHONE NUMBER CALLED	MIN.	CALL TYPE	AIR CHRGS	LD CHRGS	CALL TOTAL
22	11/19	16:05	CLEARWATER,FL	(813)530-4287	2:00	A	1.70	0.00	1.70
23	11/19	16:05	CLEARWATER,FL	(813)530-4287	2:00	LD	0.00	0.48	0.48
24	11/19		DAILY SVC			D			3.00

Subtotal of Roamer Charges incurred while in ATLANTA, GA

\$5.18
EXHIBIT A

Cellular Account # (813) 580-5550

Page # 05

ROAMER CHARGES (CONT'D.)

See Reverse for Legend

Taxes on Roamer charges incurred while in ATLANTA, GA:

Federal	\$0.15	
State	0.12	
County	0.00	
City	0.00	
Misc	0.00	
Total of Taxes		\$0.27

Total of Roamer Charges Incurred while in ATLANTA, GA	\$5.45
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Service provided while in ORLANDO, FL SID #: 00068

LINE	DATE	TIME	CITY CALLED	PHONE NUMBER CALLED	MIN.	CALL TYPE	AIR CHRGs	LD CHRGs	CALL TOTAL
25	11/10	10:50	KISSIMMEE, FL	(407)847-3099	2:00	A	0.84	0.00	0.84
26	11/10	11:06	800 SERV., CL	(800)899-8222	2:00	A	0.84	0.00	0.84
27	11/10	11:58	KISSIMMEE, FL	(407)847-3099	4:00	A	1.68	0.00	1.68
28	11/10	15:50	CLEARWATER, FL	(813)786-6001	2:00	A	0.84	0.00	0.84
29	11/10	15:50	CLEARWATER, FL	(813)786-6001	1:00	LD	0.00	0.27	0.27
30	11/10	16:02	800 SERV., CL	(800)874-7500	4:00	A	1.68	0.00	1.68
31	11/10	16:06	800 SERV., CL	(800)275-3628	6:00	A	2.52	0.00	2.52
32	11/10	16:13	800 SERV., CL	(800)275-3628	1:00	A	0.42	0.00	0.42
33	11/10	16:15	CLEARWATER, FL	(813)441-2635	3:00	A	1.26	0.00	1.26
34	11/10	16:16	CLEARWATER, FL	(813)441-2635	3:00	LD	0.00	0.71	0.71
35	11/10	16:20	800 SERV., CL	(800)275-3628	2:00	A	0.84	0.00	0.84
36	11/10		DAILY SVC			D			0.00

Subtotal of Roamer Charges incurred while in ORLANDO, FL	\$11.90
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See Reverse for Legend

Taxes on Roamer charges incurred while in ORLANDO, FL:

Federal	\$0.38	
State	1.15	
County	0.00	
City	0.00	
Misc	0.00	
Total of Taxes		\$1.53

Total of Roamer Charges Incurred while in ORLANDO, FL	\$13.43
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Service provided while in CHARLOTTE, NC SID #: 00114

LINE	DATE	TIME	CITY CALLED	PHONE NUMBER CALLED	MIN.	CALL TYPE	AIR CHRGs	LD CHRGs	CALL TOTAL
37	11/17	15:14	DELRAY BCH, FL	(407)243-4056	6:00	A	5.94	0.00	5.94
38	11/17	15:14	DELRAY BCH, FL	(407)243-4056	6:00	LD	0.00	1.44	1.44
39	11/17	15:21	800 SERV., CL	(800)275-3628	2:00	A	1.98	0.00	1.98
40	11/17	15:23	CLEARWATER, FL	(813)420-6397	2:00	A	1.98	0.00	1.98
41	11/17	15:23	CLEARWATER, FL	(813)420-6397	2:00	LD	0.00	0.48	0.48
42	11/17		DAILY OUTC OL			D			3.00

Subtotal of Roamer Charges incurred while in CHARLOTTE, NC	\$14.82
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See Reverse for Legend

Taxes on Roamer charges incurred while in CHARLOTTE, NC:

Federal	\$0.44	
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Cellular Account # (813) 580-5550

Page # 06

ROAMER CHARGES (CONT'D.)

State	0.52
County	0.00
City	0.00
Misc	0.00
Total of Taxes	

\$0.96

Total of Roamer Charges Incurred while in CHARLOTTE, NC\$15.78

ROAMER SUMMARY FOR CELLULAR PHONE NUMBER (813) 580-5550

Total Roamer Access Charges	\$15.00
Total Roamer Airtime Charges	46.52
Total Roamer Toll Charges	6.71
Total Federal Taxes on Roamer Charges	2.07
Total State Taxes on Roamer Charges	3.77
Total County Taxes on Roamer Charges	0.00
Total City Taxes on Roamer Charges	0.14
<i>Total Roamer Charges</i>	

\$74.21

EXHIBIT A



GTE WIRELESS CUSTOMER CARE
P.O. BOX 33053
ST. PETERSBURG, FL 33733

Cellular Account # (813) 580-4013
MARCH 16, 1998

WIRELESS

FOR INQUIRIES ABOUT YOUR ACCOUNT, CALL
1-800-877-5665 OR WRITE US AT THE ABOVE ADDRESS.

24481 AT 0.254 1 800401358040135

PERRY KRANIAS
13006 ROYAL GEORGE AVE
ODESSA FL 33556-5713



ACCOUNT SUMMARY

Previous Ending Balance		\$90.70
Payments Received - Thank you		\$(90.70)
Monthly Recurring Charges		\$25.00
Billing (Credit) Adjustments and Other Charges	\$0.65	
Total Billing Adjustments and Other Charges		\$0.65
Airtime Charges:		
Peak	287.00 Minutes	
Off-Peak	58.00 Minutes	
Night/Other	166.00 Minutes	
Total Airtime Charges		\$71.75
Long Distance Charges		\$8.10
Taxes:		
Federal	\$3.58	
State	7.72	
County	0.51	
City	0.00	
Misc	2.98	
Total of Taxes		\$14.79
Total Current Charges		\$120.29
TOTAL AMOUNT DUE BY 04/07		\$120.29
IF PAYMENT RECEIVED AFTER 04/12		\$122.09

PAID
CK 349
122.29
3-24-98

EXHIBIT A



WIRELESS

Cellular Account # (813) 580-4013

Page # 01

LESS PAYMENT ACTIVITY

Date Payment Received	Payment Description	Payment Amount
02/25	PAYMENT APPLIED	\$(90.70)
Total of Payments Received - Thank you		\$(90.70)

MONTHLY RECURRING CHARGES FOR CELLULAR PHONE NUMBER (813) 580-4013

Monthly Access Charges from 02/16 through 03/15		\$25.00
Feature Charges for 02/16 through 03/15		
CALL WAITING - FREE	\$0.00	
Total Charges for Features		\$0.00
Taxes on Recurring Charges:		
Federal:	\$0.75	
State:	1.79	
County:	0.19	
City:	0.00	
GROSS RCPT:	0.64	
Total of Taxes		\$3.37
Total Monthly Recurring Charges		\$28.37

BILLING CREDIT AND ADJUSTMENTS AND OTHER CHARGES FOR (813) 580-4013

Date	Description of Adjustment	Amount
03/15	FED UNIVERSAL SRVC FEE-CH	\$0.65
Taxes on Adjustments and Credits:		
Federal:	\$0.02	
State:	0.05	
County:	0.00	
City:	0.00	
GROSS RCPT:	0.02	
Total of Taxes		\$0.09
Total Billing Adjustments and Other Charges		\$0.74

MESSAGES FROM GTE WIRELESS FOR CELLULAR PHONE NUMBER (813) 580-4013

FEDERAL UNIVERSAL SERVICE FUND ASSESSMENT

IN FEBRUARY, 1998, YOU WILL SEE A NEW MONTHLY CHARGE ("FEDERAL UNIVERSAL SRVC. FEE") OF \$.65, PER LINE, ON YOUR BILL. THIS ASSESSMENT WILL SUPPORT GTE WIRELESS' PAYMENT INTO THE FEDERAL UNIVERSAL SERVICE FUND, WHICH IT IS NOW REQUIRED TO MAKE UNDER FCC REGULATIONS.

CONGRESS INTENDED THAT THE UNIVERSAL SERVICE FUND ENSURE THAT AFFORDABLE TELECOMMUNICATIONS ARE AVAILABLE TO ALL AMERICANS, AND TO PERMIT ELIGIBLE SCHOOLS, LIBRARIES, AND RURAL HEALTH-CARE FACILITIES TO BENEFIT FROM DISCOUNTED SERVICE RATES.

EXHIBIT A



WIRELESS

Cellular Account # (813) 580-4013

Page # 02

MESSAGES FROM GTE WIRELESS

(CONT'D.)

LONG DISTANCE DETAIL SUMMARY FOR CELLULAR PHONE NUMBER (813) 580-4013

LINE	DATE	TIME	CITY CALLED	PHONE NUMBER CALLED	MIN.	CALL TYPE	LD CHRGs	CALL TOTAL
01	01/27	21:56	EXPRESS DA,CL	(813) 555-1212	2:00	CPP	0.90	0.90
02	02/16	15:07	EXPRESS DA,	(813) 555-1212	1:00	LD	0.90	0.90
03	02/16	15:07	EXPRESS DA,	(813) 555-1212	2:00	LD	0.90	0.90
04	02/17	08:18	EXPRESS DA,	(813) 555-1212	1:00	LD	0.90	0.90
05	02/17	08:18	EXPRESS DA,	(813) 555-1212	2:00	LD	0.90	0.90
06	02/17	08:52	EXPRESS DA,	(813) 555-1212	1:00	LD	0.90	0.90
07	02/17	08:53	EXPRESS DA,	(813) 555-1212	1:00	LD	0.90	0.90
08	03/01	17:52	EXPRESS DA,	(813) 555-1212	2:00	LD	0.90	0.90
09	03/01	17:56	EXPRESS DA,	(813) 555-1212	2:00	LD	0.90	0.90

Subtotal Long Distance Charges:

\$8.10

See Reverse for Legend

Taxes on Long Distance:

Federal: \$0.27
State: 0.48
County: 0.00
City: 0.00
GROSS RCPT: 0.16

Total of Taxes

\$0.91

Total Long Distance Charges:

\$9.01

AIRTIME SUMMARY FOR CELLULAR PHONE NUMBER (813) 580-4013

Total Airtime Minutes

Peak (P): 287.00
Off-Peak (O): 58.00
Night(N)/Other 166.00

Subtotal Airtime Charges:

\$71.75

Taxes on Airtime:

Federal: \$2.54
State: 5.40
County: 0.32
City: 0.00
GROSS RCPT: 2.16

Total of Taxes

\$10.42

Total Airtime Charges:

\$82.17

EXHIBIT A

CUSTOMER SERVICE AGREEMENT

<p>1 Date: <u>10-31-95</u></p> <p>Agent ID: <u>EDV61596</u></p> <p><input type="checkbox"/> Pre Approval <input type="checkbox"/> New <input type="checkbox"/> Change</p> <p>Sales Person: <u>DOUG PAE</u></p> <p>Ph#: <u>813-855-0022</u></p>	<p>2 Exchange Required: <u>Clearwire</u></p> <p>Cellular #: <u>813-580-4013</u></p> <p>ESN (Primary) <u>D531921E</u></p> <p>ESN (Secondary) _____</p> <p>Customer Existing: # _____</p> <p>Summary #: <u>999-004</u></p> <p><input type="checkbox"/> New <input type="checkbox"/> Existing</p> <p>Agreement #: <u>YMY387</u></p>	<p>3 ADDENDUM: _____</p> <p>Change Rate Plan _____ <small>OLD RATE PLAN</small></p> <p>Service Order Processing Fee \$25</p> <p>Add On _____ Delete _____</p> <p>Change Billing Address _____</p> <p>Transfer of Service _____</p> <p>Number Change _____</p> <p>Out / Reason _____</p> <p>EQUIPMENT UPGRADE:</p> <p>Airtime Credit: \$ _____</p> <p>MSD: _____</p> <p>Old ESN: _____</p> <p>New ESN: _____</p> <p>Last 3 mo. Bill: _____ Month</p> <p>1) \$ _____</p> <p>2) \$ _____</p> <p>3) \$ _____</p>
<p>4 MAILING ADDRESS</p> <p>ADDRESS _____</p> <p>CITY _____ STATE _____ ZIP _____</p>		
<p>5 Customer Signature (Authorization To Change Account) _____ Date _____</p>		
<p>6 COMPLETE FOR INDIVIDUAL APPLICANT</p> <p>(Check one box) <input type="checkbox"/> Individual Subscriber <input type="checkbox"/> General Partner <input type="checkbox"/> Owner or Sole Proprietorship</p> <p>Subscriber Name <u>PERRY KRANJAS</u></p> <p>Residential Address (must use street address)</p> <p>Street <u>2500 WINDING CR</u> <u>BLVD</u> <u>APT 204</u></p> <p>City <u>CLERMONT</u> State <u>FL</u> Zip <u>34121</u></p> <p>Home Phone <u>813-726-7391</u></p> <p>Fax Number _____</p> <p>Social Security # <u>590-40-8216</u></p> <p>Date of Birth <u>04-12-71</u></p> <p>Driver's License # <u>K65267771132</u></p> <p>(COPY ATTACHED)</p> <p>State <u>FL</u> Expiration Date <u>4/12/97</u></p> <p>Employer Name <u>WALKER FORD</u></p> <p>Position <u>USED CAR SALES</u> Date of employment _____</p> <p>Business Phone # _____</p> <p>Former Home Address (if less than 2 years)</p> <p>Street _____</p> <p>City _____ State _____ Zip _____</p>	<p>8 SERVICE ACTIVATION</p> <p><input checked="" type="checkbox"/> Contract — 1 Year Agreement <input type="checkbox"/> Non-Contract <small>INITIAL</small></p> <p><input checked="" type="checkbox"/> One-Time Activation Fee \$35.00 Per Number <input type="checkbox"/></p> <p>9 SERVICE PLAN</p> <p>Check One: <input type="checkbox"/> NORTH <input type="checkbox"/> SOUTH</p> <p>Rate Plan Name <u>Multi Use</u></p> <p>Access \$ <u>15</u> Per Month Peak \$ <u>25</u> Per Minute</p> <p>Minutes Included _____ Per Month Off-Peak \$ <u>20</u> Per Minute</p> <p>10 ENHANCED SERVICES</p> <p><input type="checkbox"/> Mobile Secretary <input type="checkbox"/> BASIC Per Number \$ _____ Per Mo.</p> <p><input type="checkbox"/> ENHANCED Per Number \$ _____ Per Mo.</p> <p>Pager Company _____</p> <p>Pager #/PIN _____</p> <p><input type="checkbox"/> CALLING FEATURES</p> <p><input type="checkbox"/> Weekend Calling \$ _____ Per Mo. <input type="checkbox"/> Call Forwarding \$ _____ Per Mo.</p> <p><input type="checkbox"/> Deluxe Service Pkg. \$ _____ Per Mo. <input type="checkbox"/> Conference Calling \$ _____ Per Mo.</p> <p><input type="checkbox"/> Call Waiting \$ _____ Per Mo. <input type="checkbox"/> No Answer Transfer \$ _____ Per Mo.</p> <p><input type="checkbox"/> Call Restrictions <input type="checkbox"/> In <input type="checkbox"/> Out <input type="checkbox"/> Toll <input type="checkbox"/> The 1-Plan \$ _____ Per Mo.</p> <p>11 DETAILED BILLING <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No</p> <p><input type="checkbox"/> Individual Billing: \$3.95 Per Number Per Month</p> <p><input type="checkbox"/></p> <p>12 <input type="checkbox"/> Mr. Rescue \$ _____ Per Month PHONE TYPE:</p> <p><input type="checkbox"/> Equipment Insurance <input type="checkbox"/> Mobile</p> <p><input type="checkbox"/> Cellular Assurance Plus (CHECK PHONE TYPE) \$ _____ Per Month <input type="checkbox"/> Transportable</p> <p><input type="checkbox"/> Accessories Coverage \$ _____ Per Month <input type="checkbox"/> Portable</p> <p>13 TERM COMMITMENT PLAN</p> <p>I understand I may not change my rate plan to one with a lower monthly access charge for 90 days. <input checked="" type="checkbox"/> <u>PK</u> Initials</p> <p>I elect to subscribe to the GTE contract rate option. I acknowledge that I have read, understand and accept the terms and conditions on the reverse side of this Agreement, including but not limited to the \$200.00 early termination liability. <input checked="" type="checkbox"/> <u>PK</u> Initials</p> <p>14 BILLING VERIFICATION: (For Business Applicants and when an agreement number is required)</p> <p>Business Contact Name _____</p> <p>Authorization Verified <input type="checkbox"/> YES Agent Initials _____</p> <p>15 COMPLETE FOR TRANSFER OF NUMBER</p> <p>The undersigned ("Subscriber") hereby requests and authorizes GTE Mobiletel to cancel Service to the above named Subscriber with the number written above ("Number"), which is presently assigned to Transferor. Transferor acknowledges and agrees that GTE Mobiletel reserves the right, for any reason, to refuse to accept the above named Subscriber as a subscriber to Service and to refuse to extend service to such Subscriber. Transferor acknowledges that he or she is, and will remain, liable to GTE Mobiletel for all debts and charges incurred whether billed or not, under the Number up to the date GTE Mobiletel accepts the above named Subscriber for Services under the Number.</p> <p>Transferor _____ Date _____</p> <p>PARTY NAMED ON CELLULAR # _____</p> <p>16 ID AFFIDAVIT. The information provided on this agreement matches the name, address, SSN#, date of birth, and signature on the applicant's picture ID. Customer's ID for rate plan eligibility has been verified.</p> <p>Sales Person Signature <u>DOUG PAE</u> Date <u>10-31-95</u></p> <p>Print <u>DOUG PAE</u></p> <p>Agent Name <u>TECHNICAL</u> Agent Phone <u>813-855-0022</u></p> <p>17 TRANS. # _____ Credit Class _____</p> <p>Deposit Required _____ Deposit Paid _____</p> <p>Completed by _____ Date _____</p>	
<p>18 SERVICE AGREEMENT SIGNATURE</p> <p>Subscriber: By signature, Subscriber confirms the truth and correctness of the above information and that the Subscriber has agreed to purchase Service on the Rate Plan specified above. Subscriber acknowledges having read, and agrees to all terms and conditions on the reverse side of this Customer Service Agreement. Subscriber further authorizes consumer reporting agencies to furnish GTE Mobiletel with a credit report or history.</p> <p>Signature <u>Doug Pae</u></p> <p>Date <u>10-31-95</u></p> <p>19 Corporate or Partnership Subscriber</p> <p>Any person signing on behalf of a corporation or partnership warrants that he or she has authority to do so.</p> <p>Print User Name _____</p> <p>By: _____ Date _____</p> <p>SIGNATURE OF AUTHORIZED PERSON</p> <p>Print Name of Authorized Person _____</p> <p>Print Title _____</p>		

28081

TERMS AND CONDITIONS

(1) **PARTIES:** This Agreement is made by GTE Mobilnet Service Corporation, on behalf of its affiliates and subsidiaries, (GTE) as agent or reseller for the cellular network operator (licensee) licensed by the Federal Communication Commission to serve Customers' primary service area and the individual or organization (Customer) identified on the front of this agreement. In those locations where GTE is a reseller of cellular network services, GTE reserves the right to select or change the network service provider.

(2) **SERVICE:** GTE will provide Customer access to cellular telephone and related services within the area effectively served by the licensee. The area effectively served is subject to transmission limitations caused by atmospheric and other natural or artificial conditions and conditions generally beyond the control of GTE, including the type and condition of Customers' cellular equipment. Services are furnished subject to the condition that there will be no abuse or fraudulent use thereof. Any attempt to abuse or to fraudulently use services by Customer may result in the immediate suspension or cancellation of service.

(3) **ACCESS:** System access will be provided by means of a ten (10) digit telephone number. GTE and the network service provider reserve the right to change any or all such numbers on not less than ten (10) days notice.

(4) **DEPOSIT:** At GTE's sole option, Customer may receive service prior to the completion of a credit check. GTE reserves the right to require Customer to make a deposit at any time for the continuation or restoration of service. The deposit will be held a minimum of twelve (12) months and interest will be paid at 6% per annum.

(5) **PRICE:** Customer shall pay to GTE the charges set forth on the opposite side of this Agreement, cellular telephone usage fees appropriate for the rate plan selected, toll charges and applicable taxes. Subject to any regulatory requirements, rates and charges may be modified from time to time by GTE. Changes in peak/off-peak time periods will not be considered a change in rates.

(6) **PAYMENT:** Customer shall be invoiced on a monthly basis. Payment shall be due within (20) days after the invoice date. Payment will be deemed made when received by GTE. Late payments shall be subject to the maximum late payment charge permitted by law. If timely payment for service provided under this agreement, or any other agreement between Customer and GTE, is not received in the full amount of the invoice, GTE may, at its sole option and without limiting any other remedy available under the law, disconnect Customer from service provided under this agreement, or any other agreement between Customer and GTE. Customer may then be required to pay a reconnection charge for service restoration. Customer shall be liable to GTE for any and all costs and fees, including collection and actual attorney fees, associated with the collection of service charges from Customer.

(7) **TERMS:** A. **Non-Contract** — Either party may terminate a non-contract agreement for any reason upon giving notice to the other party. Termination by Customer must be made in writing to the GTE Mobilnet, Inc. located at 600 North Westshore Blvd., Suite 900, Tampa, FL 33609, effective on the date of receipt, unless a later date is specified in the notice. In the event GTE is unable to locate Customer, notice to Customer will be deemed given on the date of mailing to Customer's last known address.

B. **CONTRACT** — IN CONSIDERATION FOR THE CUSTOMER'S AGREEMENT TO RETAIN SERVICE FROM GTE FOR A MINIMUM TERM OF TWELVE (12) MONTHS, CUSTOMER SHALL RECEIVE THE DISCOUNTED CONTRACT RATE. GTE MAY TERMINATE THE CONTRACT OFFERING AT THE END OF ANY CONTRACT TERM.

(8) CANCELLATION AND TERMINATION FEE:

A. **Service Cancellation** — In the event Customer cancels a request for cellular service before equipment installation and network connections are completed, Customer shall be liable to GTE or its agents for all labor costs associated with the installation of Customer's access equipment and network connections, removal of Customer's access equipment and network disconnections. If a deposit is required of Customers, all such costs and charges shall be deducted before any credit is issued to Customer. If at any time within 30 days after cellular service is established Customer terminates this agreement, Customer will forfeit any deposit tendered by Customer to GTE or its agents to secure cellular service as a set-off against the cost of service establishment.

B. **Contract Termination Fee** — Customer acknowledges that the contract option provides a discounted rate and that early termination of the contract will result in a financial damage to GTE. IN THE EVENT OF EARLY TERMINATION BY CUSTOMER FOR ANY REASON, CUSTOMER SHALL BE LIABLE TO GTE FOR A TERMINATION FEE OF TWO HUNDRED DOLLARS (\$200) IN ADDITION TO ANY OTHER DAMAGES GTE MAY BE ENTITLED TO BY LAW. Early termination shall mean any act of Customer which effectively ends the contract, including by way of example, service termination. Customer shall be liable to GTE for any and all costs and expenses, including actual attorney fees, associated with the collection of the termination fee.

(9) **INSURANCE:** If Customer selected Cellular Assurance Plus protection on this application, Customer acknowledges receipt of the coverage summary. On Customer's behalf, GTE Mobilnet will remit the monthly charge for the insurance which appears on Customer's cellular phone bill to The Signal Telecommunications Insurance Services. Customer acknowledges that insurance protection is offered by The Signal, and not by GTE Mobilnet and that any claims regarding the insurance shall be directed to The Signal.

(10) **LIMITATION OF LIABILITY:** GTE shall not be liable to Customer for interruptions caused by failure of equipment or services not provided by GTE, failure of communications, power outages, or other interruption not within the complete control of GTE, nor shall GTE be liable for performance deficiencies caused or created by Customer's equipment. GTE's performance under this agreement shall be excused by labor difficulties, governmental orders, civil commotions, acts of God, or other conditions or circumstances beyond its reasonable control. GTE shall not be liable to Customer if changes in operation, procedures, or services require modification or alteration of Customer's equipment, render the same obsolete or otherwise affect its performance. There shall be no credits, reductions, or setoff against the charges for service for downtime or interruption of service (unless such service interruption exceeds twenty-four (24) hours in duration). GTE shall provide Customer with a credit equal to 1/30 of the recurring monthly charge for service for each twenty-four (24) hour period from the time of notice of interruption until service restoration (provided Customer notified GTE of the service interruptions). GTE shall not be liable for any incidental, consequential or punitive damages including but not limited to loss of profits, loss of business or business opportunity, loss of use, etc. GTE MAKES NO OTHER WARRANTIES OR REPRESENTATIONS, EITHER EXPRESS OR IMPLIED CONCERNING THE SERVICES, AND EXPRESSLY DISCLAIMS WARRANTIES OF FITNESS FOR A PARTICULAR USE OR PURPOSE, THE WARRANTY OF MERCHANTABILITY AND ANY OTHER WARRANTY IMPLIED BY LAW.

(11) **REGULATION:** This agreement shall at all times be subject to change or modification required by the regulatory authority of the state in which service is provided, the Federal Communications Commission, or any other authorized governmental body.

(12) **TELEPHONE ORDERS:** In the event that this agreement is not executed by Customer, receipt of a copy of the Agreement and acceptance of service shall obligate Customer to the terms and conditions set forth.

(13) **NON-WAIVER:** Failure to enforce any right shall not constitute a waiver of such right or of any other right, whether of a similar or dissimilar nature, and shall not prohibit the exercise of the same right at a future date.

(14) **CONTROLLING DOCUMENTS:** THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT SUPERSEDE ANY OTHERS, INCLUDING PRIOR OR CONTEMPORANEOUS REPRESENTATIONS OF SALES REPRESENTATIVES OR OTHER PERSONNEL OF GTE, WHETHER ORAL OR WRITTEN.

10/19/94

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CLERK OF COURT
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JAMES J. WHITE, PERRY KRANIAS, and
RALPH DELUISE,

Representative Plaintiffs,

v.

CASE NO: 97-1859-CIV-T-26C

GTE CORPORATION; GTE WIRELESS
INCORPORATED, f/k/a GTE MOBILNET
INCORPORATED; GTE WIRELESS OF
THE SOUTH INCORPORATED, f/k/a GTE
MOBILNET OF TAMPA INCORPORATED and
GTE MOBILNET OF THE SOUTH
INCORPORATED; GTE WIRELESS OF
HOUSTON INCORPORATED; GTE
MOBILNET OF CLEVELAND
INCORPORATED; and GTE MOBILNET OF
THE SOUTHWEST INCORPORATED,

Defendants.

_____/

ORDER

Before the Court are the Dispositive Motion to Dismiss Plaintiffs' Third Amended Complaint filed by GTE Wireless Incorporated and GTE Wireless of the South Incorporated and the supporting memorandum (Dkts. 72 and 73), the Dispositive Motion to Dismiss Plaintiffs' Third Amended Complaint filed by Defendants GTE Corporation, GTE Wireless of Houston Incorporated, GTE Mobilnet of Cleveland Incorporated, and GTE Mobilnet of the Southwest Incorporated and the supporting memorandum (Dkts. 74

EXHIBIT B

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and 75), Plaintiffs' Responses (Dkts. 76 and 85), the Reply to Plaintiffs' Response to Defendants GTE Wireless Incorporated's and GTE Wireless of the South Incorporated's Dispositive Motion to Dismiss (Dkt. 86), the Memorandum Correcting Mistake Contained in Reply (Dkt. 87), Plaintiffs' Notices of Filing Supplemental Case Law (Dkts. 88 and 93). After careful consideration of the motions and the file, the Court is of the opinion that the motion to dismiss for failure to allege a claim for relief should be granted as to count II and denied as to counts I, III, and IV. The motion to dismiss for lack of personal jurisdiction should be denied.

Allegations of the Third Amended Complaint

Plaintiffs represent a purported class of individuals of Florida residents who were cellular service customers of Defendants (GTE).¹ (Dkt. 70 at para. 25). GTE allegedly concealed and failed to disclose its practices of charging on a "rounded up" basis. (Dkt. 70 at para. 26). "Rounding up" means that each call is billed in whole minute increments, with any fraction of a minute being billed as a whole minute. (Dkt. 70 at para. 14). Each call begins at the time the "send" button is pushed, regardless of whether a connection is made. (Dkt. 70 at para. 14). GTE charged Plaintiffs on a "rounded up" basis and Plaintiffs paid GTE the amount billed. The monthly bills do not disclose or explain the

¹ The Court will refer to all defendants as GTE. The part of this order addressing personal jurisdiction refers only to the non-resident defendants.

practice of “rounding up.” (Dkt. 70 at para. 19). The contracts between GTE and Plaintiffs, both oral and written, did not provide “an adequate description or disclosure . . . as to GTE’s Rounding Up practices.” (Dkt. 70 at paras. 20 and 22). GTE induced Plaintiffs to enter into the contracts “with advertisements and materials, including, among other things, promises of free air time.” (Dkt. 70 at para. 18).

In the four-count complaint, count I alleges a private action pursuant to 47 U.S.C. section 207 for a violation of the Communications Act of 1934, 47 U.S.C. section 201(b). (Dkt. 70 at para. 37). Plaintiffs assert that “[t]he practice of charging for all air time on a Rounded Up basis is unjust and unreasonable, and therefore unlawful, under the provisions of 47 U.S.C. section 201(b).” (Dkt. 70 at para. 38). Count II seeks an injunction to restrain GTE from “rounding up.” (Dkt. 70 at paras. 40-44).

Count III seeks damages for breach of contract. (Dkt. 70 at paras. 45-50). GTE allegedly breached the oral and written contracts “by charging and collecting more money for cellular phone services than Plaintiffs and class members have agreed to pay.” (Dkt. 70 at para. 48). Count IV constitutes a state law claim based on a violation of section 501.201, et seq., Florida Statutes, which is the Florida Deceptive and Unfair Trade Practices Act (FDUTPA). (Dkt. 70 at paras. 51-57). Plaintiffs allege that “charging for all air time on a Rounded Up basis, without adequately disclosing such practices,” amounts to unfair competition.

Plaintiffs sued a total of seven defendants. Of those seven, two are corporations

authorized to conduct business in Florida, one of which is a Florida corporation and the other a Delaware corporation. (Dkt. 70 at paras. 6 and 7). Four of the remaining five defendants are either Delaware or Texas corporations that provide cellular service throughout the United States “either directly or indirectly through its subsidiaries and affiliates.” (Dkt. 70 at paras. 5, 8, 9, and 10). The last defendant is GTE Corporation, a New York corporation that not only provides cellular service throughout the United States “either directly or indirectly through its subsidiaries and affiliates,” but is “the parent corporation of or is otherwise affiliated with all other Defendants.” (Dkt. 70 at para. 4).

Argument

Defendants characterize Plaintiffs’ claims as ones seeking a retroactive rate reduction. Defendants argue that the two state law claims (counts III and IV) are preempted expressly and completely as improper rate regulation in violation of the Federal Communications Act (FCA). As to the state law claim of breach of contract, Defendants contend that the contracts obligate Plaintiffs to pay per minute rates.

Defendants argue that the claim based on the FCA (count I) should fail because per minute billing does not constitute a per se violation and Plaintiffs have not suffered any direct injury from the billing process. As to the claim titled “injunction” (count II), no such federal claim exists, and even if it did, Plaintiffs have an adequate remedy at law.

Plaintiffs respond that this purported class action challenges Defendants’

“fraudulent and deceptive promotional and contract practices, not Defendants’ rates.”

(Dkt. 76 at 11). Plaintiffs state that they are attacking the deceptive promotional, advertising, contracting and billing practices of Defendants. They suffered injury by not receiving the full amount of allocated cellular air time elected under a contract and by being overcharged for air time used in excess of the flat-rate amount allocated under the service plan chosen.

Violation of 47 U.S.C. § 201(b)

Plaintiffs state that one of the issues in this action is whether Defendants violated 47 U.S.C. section 201(b) by “deceptively promoting, contracting and billing Plaintiffs by rounding up calls.” (Dkt. 76 at 13). The complaint specifically alleges that the practice of charging for all air time by rounding up is unjust and unreasonable under section 201(b). (Dkt. 70 at para. 38). Thus, at least in count I, Plaintiffs do not appear to be challenging the reasonableness of the rates or the failure to disclose a particular billing practice, but rather are challenging the reasonableness of the billing practice itself.

Most of the cases addressing the viability of actions based on the practice of rounding up may be divided into three categories: 1) federal cases deciding whether the FCA completely preempts state law claims for purposes of removal jurisdiction,² 2) state

² See, e.g., Marcus v. AT & T Corp., 138 F.3d 46 (2d Cir. 1998); Sanderson, Thompson, Ratledge & Zinny v. AWACS, Inc., 958 F.Supp. 947 (D.Del. 1997); Bennett v. Alltel Mobile Communications of Alabama, Inc., No. Civ.A. 96-D-232-N, 1996 WL

cases deciding whether a cause of action exists for breach of contract, fraud, violations of state consumer acts for fraud and unfair trade practices, and various other state law claims,³ and federal cases addressing preemption in a non-removal setting.⁴ Of the cases addressing removal issues, the courts have found that the complete preemption doctrine, a concept associated with removal jurisdiction, does not extend to the FCA. In so ruling, some courts in dicta wrote that when a plaintiff challenges billing practices as unreasonable, as opposed to challenging improper billing based on deceptive advertising, a claim for relief for damages under section 207 of the FCA is available.⁵

1054301 (M.D.Ala. May 14, 1996); DeCastro v. AWACS, Inc., 935 F.Supp. 541 (D.N.J. 1996); In re Comcast Cellular Telecommunications Litigation, 949 F.Supp. 1193 (E.D.Penn. 1996).

³ See, e.g., Tenore v. AT & T Wireless Services, 962 P.2d 104 (Wash. 1998), cert. denied, No. 98-947, 1999 U.S. LEXIS 1507 (U.S. Feb. 22, 1999).

⁴ See In re Long Distance Telecommunications Litigation, 831 F.2d 627, 633 (6th Cir. 1987) (primary jurisdiction doctrine required referral of claim regarding reasonableness of defendant's practices to Federal Communications Commission, but state law claims for fraud and deceit based on failure to notify customers of practice of charging for uncompleted calls not preempted by FCA); Stein v. Sprint Corp., 22 F.Supp. 1210 (D.Kan. 1998) (filed-rate doctrine barred claims for fraud and breach of contract and for damages or injunction requiring certain rate be charged, but did not preempt state law claims under state statutes for injunction relating to deceptive advertising).

⁵ See Sanderson, Thompson, Ratledge & Zinny v. AWACS, Inc., 958 F.Supp. 947, 955-56 (D.Del. 1997) (claims for statutory fraud and breach of contract did not challenge reasonableness of billing practice or rate and therefore did not fall within the scope of civil enforcement of FCA); In re Comcast Cellular Telecommunications Litigation, 949 F.Supp. 1193, 1203 (E.D.Penn. 1996) (true gravamen of complaint was challenge to rates and billing practices and as such action under section 207 would have been available); DeCastro v. AWACS, Inc., 935 F.Supp. 541, 550 (D.N.J. 1996) (section 207 does not provide federal cause of action for violations of a knowing failure to

After carefully considering all the cases and pertinent provisions of the FCA, this Court concludes that the FCA permits under section 207 a claim for damages for the reasonableness of a particular billing practice, such as the practice of rounding up.⁶ However, this Court must invoke the doctrine of primary jurisdiction and refer the issues raised in this count to the Federal Communications Commission. See In re Long Distance Telecommunications Litigation, 831 F.2d at 629-630 (primary jurisdiction applies where claim is originally cognizable in courts but regulatory scheme requires enforcement of the claim by administrative body, quoting United States v. Western Pacific R.R., 352 U.S. 59, 63-65 (1956)).

disclose a particular billing practice); Weinberg v. Sprint Corp., 165 F.R.D. 431, 438-39 (D.N.J. 1996) (no removal jurisdiction where plaintiff's state law claims related to Sprint's advertising practices rather than the billing practice itself); Marcus v. AT & T Corp., 938 F.Supp. 1158, 1167-69 (S.D.N.Y. 1996) (common law claims arose under federal law and removal was proper).

⁶ No mention of the "filed rate" or "filed tariff" doctrine has been made. If this case were governed by the filed rate doctrine, count I would be barred. See Marcus, 938 F.Supp. at 1169-70. This Court assumes that it is inapplicable because Defendants are characterized as commercial mobile radio service providers, which are specifically exempted from tariff filing requirements by the FCA. See Tenore v. AT & T Wireless Services, 962 P.2d 104, 109-10 (Wash. 1998) (citing 47 C.F.R. sections 20.15(a), (c), 20.3, and 20.9(a)). In any event, whether competition in the area of cellular telephone service necessarily makes any rate per se reasonable should be decided by the Federal Communications Commission under the doctrine of primary jurisdiction. See In re Long Distance Telecommunications Litigation, 831 F.2d 627, 631 (6th Cir. 1987) (claims based on 47 U.S.C. 201(b) are within primary jurisdiction of FCC); Kiefer v. Paging Network, Inc., 50 F.Supp. 681, 682 (E.D.Mich. 1999) (reasonableness of standardized late payment charge should be referred to FCC).

Florida Deceptive and Unfair Trade Practices Act

Plaintiffs challenge the failure to disclose the billing practice of rounding up as deceptive under the FDUTPA. Applying simple preemption principles, as opposed to the complete preemption doctrine required in removal cases, the courts have found that the FCA does not preempt state law claims attacking the failure to disclose the method by which a customer's bill is determined. Because this claim appears to be one of those which are not preempted by the FCA, count IV will be permitted.

Breach of Contract

Essentially, Defendants argue that because Plaintiffs agreed to per minute billing, Plaintiffs cannot state a cause of action for breach of contract. Plaintiffs respond that although some of the customer contracts contain the term "per minute billing," that term is not defined. On balance, the Court finds that count III alleges sufficient facts at this stage to state a cause of action for breach of contract.

Claim for Injunction

The Court agrees with Defendants that Plaintiffs have failed to allege a cognizable claim for injunctive relief. Plaintiffs have not persuaded this Court that a separate and independent federal claim for injunctive relief exists in this case. Plaintiffs state that they "are not specifically seeking an injunction on a federal common law theory" but that

“such relief is commonly recognized” by the state courts of Florida. (Dkt. 76 at 11). To the extent Plaintiffs seek injunctive relief pursuant to FDUTPA, they must do so in count IV.

Personal Jurisdiction over Non-resident Defendants

Plaintiffs counter the Non-resident Defendants’ arguments with the fact that the contract attached to the complaint specifically defines them as parties to the contract. The customer service agreement attached as Exhibit B to the Third Amended Complaint provides that the agreement “is made by GTE Mobilnet Service Corporation, on behalf of its affiliates and subsidiaries.” The complaint alleges that the Non-resident Defendants are either the subsidiaries or affiliates of GTE Mobilnet Service Corporation. (Dkt. 70 at para. 11). Defendants’ counter affidavits have not shown otherwise. Consequently, this Court finds that personal jurisdiction exists over the Non-Resident Defendants.

It is therefore **ORDERED AND ADJUDGED** as follows:

1. The Dispositive Motion to Dismiss Plaintiffs’ Third Amended Complaint filed by GTE Wireless Incorporated and GTE Wireless of the South Incorporated (Dkt. 72) is **GRANTED** in part and **DENIED** in part. The motion is granted as to count II and denied as to counts I, III, and IV.

2. The Dispositive Motion to Dismiss Plaintiffs’ Third Amended Complaint filed by Defendants GTE Corporation, GTE Wireless of Houston Incorporated, GTE

Mobilnet of Cleveland Incorporated, and GTE Mobilnet of the Southwest Incorporated (Dkt. 74) is **DENIED**.


3. Under the doctrine of primary jurisdiction, the Court hereby **REFERS** count I to the Federal Communications Commission (FCC) for a decision. Plaintiffs are **directed** to file a petition for a determination of the issues contained in count I with the FCC. The Clerk of the Court shall certify a copy of the entire record in this case to be transmitted to the FCC.

4. The remaining claims are hereby **STAYED** pending a determination of the reasonableness of Defendants' billing practice of rounding up. The parties shall advise this Court of the FCC's ruling or other determination immediately.

5. All other pending motions including the motion for class certification (Dkt. 50) are **DENIED** with leave to refile after the FCC has rendered its decision.

6. The Clerk is directed to **administratively close** this case.

DONE AND ORDERED at Tampa, Florida, on this 21 day of October, 1999.



RICHARD A. LAZZARA
UNITED STATES DISTRICT JUDGE

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Counsel of Record